

The Honorable Richard A. Jones

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON; et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE; et al.,

Defendants.

NO. 2:20-cv-00111-RAJ

DECLARATION OF KRISTIN
BENESKI IN SUPPORT OF
PLAINTIFF STATES' POST-
HEARING NOTICE

1 I, Kristin Beneski, declare and state as follows:

2 1. I am over the age of 18 and have personal knowledge of all the facts stated herein.

3 2. I am an Assistant Attorney General with the Washington State Attorney General's
4 Office and counsel of record for the State of Washington in this matter.

5 3. In accordance with the Court's comments at the conclusion of the hearing on the
6 Plaintiff States' Motion for Preliminary Injunction held on Friday, February 28, 2020, the parties
7 have conferred several times during the week of March 1 via telephone and email.

8 4. On Monday, March 2, I circulated to all parties' counsel by email a proposal that
9 would have preserved the status quo as to the Munitions List items at issue by agreement, pending
10 the parties' further discussions to attempt to negotiate a long-term resolution of this matter. Later
11 that day, counsel for all parties (the Plaintiff States, the Federal Defendants, and the Intervenor-
12 Defendants) conferred via telephone. On that call, Mr. Soskin stated that the Federal Defendants
13 were not amenable at that time to discussing a long-term resolution or taking steps to facilitate
14 such discussions, but were only willing to discuss the scope of a potential preliminary injunction.
15 Mr. Soskin also stated that the Federal Defendants could in theory comply with an injunction
16 narrowly focused on the Munitions List items at issue by publishing an interim final rule
17 modifying the Final Rules prior to their implementation. We requested that Mr. Soskin provide
18 the Plaintiff States with a counter-proposal in writing, and Mr. Soskin stated that he expected to
19 do so in short order. Attached hereto as **Exhibit 1** is a true and correct copy of the parties' email
20 exchange concerning the March 2 call.

21 5. By the close of business the following day, Tuesday, March 3, the Plaintiff States
22 had not received a counter-proposal. Mr. Rupert sent an email to Mr. Soskin inquiring as to
23 whether a proposal was forthcoming. Mr. Soskin responded early the following morning, stating
24 that he expected to send a proposal "within the next couple of hours" that would include "draft
25 text of revised EAR regulations that the Department of Commerce would implement to comply
26 with an injunction requiring the status quo be maintained with respect to 3-D firearms files."

1 These communications are reflected in **Exhibit 1**.

2 6. Several hours later, on the morning of Wednesday, March 4, counsel for all
3 parties spoke again by telephone. Attached hereto as **Exhibit 2** is a true and correct copy of the
4 parties' email exchange concerning the March 4 call. During this call, Mr. Soskin stated that,
5 notwithstanding his email of earlier that morning, a proposal may not be forthcoming. However,
6 Mr. Soskin stated that he would provide a written proposal if he received authority to do so. I
7 stated that the Plaintiff States felt it was necessary to advise the Court of the progress that had
8 been made thus far, given the time-sensitivity of this matter (with the Final Rules scheduled to go
9 into effect on March 9). Mr. Soskin acknowledged the time-sensitivity and stated that he
10 understood the Plaintiff States' position. By way of response to Mr. Soskin's email referenced in
11 paragraph 5 above, I further stated that any revised regulations that do not keep the items at issue
12 on the Munitions List and subject to the International Traffic in Arms Regulations (ITAR) would
13 not satisfy an injunction requiring preservation of the current status quo. Mr. Soskin disagreed
14 with this position.

15 7. At the end of the March 4 call, I reiterated that the Plaintiff States remain open to
16 seeking a long-term resolution of this matter, as all parties appear to agree that effective export-
17 control regulation of the technical data at issue is warranted.

18 8. Several hours later, on the afternoon of March 4, Mr. Soskin provided a written
19 proposal via email. I promptly responded, explaining that the proposal would not preserve the
20 current status quo as to the Munitions List items at issue. Attached hereto as **Exhibit 3** is a true
21 and correct copy of that email exchange.

22 9. In brief, the parties have been unable to reach an agreement as of the filing of this
23 declaration. However, in light of the parties' discussions, the Plaintiff States are now confident
24 that a narrower injunction than the one initially requested could be feasible, appropriate, and
25 sufficient to prevent irreparable harm and preserve the status quo, and that the Federal Defendants
26 could comply with such an injunction by way of an interim final rule or emergency rulemaking.

1 The Plaintiff States are therefore submitting, for the Court's consideration, a proposed order
2 exclusively focused on the Munitions List items at issue in this case.

3 I declare under penalty of perjury under the laws of the United States and the State of
4 Washington that the foregoing is true and correct.

5 DATED this 4th day of March, 2020, at Seattle, Washington.

6 s/ Kristin Beneski

7 KRISTIN BENESKI

Exhibit 1

From: [Soskin, Eric \(CIV\)](#)
To: [Rupert, Jeffrey G. \(ATG\)](#); [Beneski, Kristin \(ATG\)](#); pshah@akingump.com
Cc: [Glover, Matthew J. \(CIV\)](#); [Selby, Brendan \(ATG\)](#)
Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ
Date: Wednesday, March 4, 2020 5:09:36 AM

Jeff,

I have a proposal ready to send to you, and am awaiting final clearance to do so, which I expect within the next couple of hours. What we will share is draft text of revised EAR regulations that the Department of Commerce would implement to comply with an injunction requiring the status quo be maintained with respect to 3-D firearms files. As you know, we believe that is the effect of the Final Commerce Rule, but what we are sending employs a different approach to doing so that we are optimistic you will conclude satisfies the concerns you raised about the Final Rule.

We appreciate your patience.

Best regards,
Eric

From: Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>
Sent: Tuesday, March 3, 2020 7:20 PM
To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Soskin, Eric (CIV) <ESoskin@civ.usdoj.gov>; pshah@akingump.com
Cc: Glover, Matthew J. (CIV) <mgllover@CIV.USDOJ.GOV>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>
Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Eric,

We had thought that we would receive a proposal from your clients promptly given the time sensitivity. Will a proposal be coming?

Jeff

Jeff Rupert
Washington Attorney General's Office
Complex Litigation Division
Division Chief
206-389-2116
JeffreyR2@atg.wa.gov

From: Beneski, Kristin (ATG)
Sent: Monday, March 2, 2020 1:11 PM

To: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; pshah@akingump.com

Cc: Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Eric,

Thanks for the further discussion on the call just now. We look forward to seeing your proposal in writing as soon as you can provide it.

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>

Sent: Monday, March 2, 2020 12:23 PM

To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; pshah@akingump.com

Cc: Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Kristin,

Thank you for sharing. Just so that we are on the same page for the call, we think a more meaningful discussion can be had around the scope of an injunction that the Court could enter and with which Defendants could comply, as opposed to an agreed-upon temporary stay.

Best,

Eric

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>

Sent: Monday, March 2, 2020 2:06 PM

To: Soskin, Eric (CIV) <ESoskin@civ.usdoj.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; pshah@akingump.com

Cc: Glover, Matthew J. (CIV) <mglover@CIV.USDOJ.GOV>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

All,

In advance of our call at 3:30 ET, attached for your consideration is proposed language for an agreed injunction or other agreed order. The idea would be to preserve the status quo as to the relevant software/technology prior to March 9, and allow the rules' remaining provisions to go into effect, while we discuss/negotiate specific changes to the rules' language. Please note that we are circulating this proposal in the hopes of facilitating a productive discussion today, but we do not have authority to agree to it at this time.

Looking forward to speaking with everyone soon. We will circulate a calendar invite with a dial-in shortly.

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Beneski, Kristin (ATG)

Sent: Monday, March 2, 2020 8:46 AM

To: 'Soskin, Eric (CIV)' <Eric.Soskin@usdoj.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; 'pshah@akingump.com' <pshah@akingump.com>

Cc: 'Glover, Matthew J. (CIV)' <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Yes, 3:30 Eastern works for us.

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Beneski, Kristin (ATG)

Sent: Monday, March 2, 2020 8:27 AM

To: 'Soskin, Eric (CIV)' <Eric.Soskin@usdoj.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; pshah@akingump.com

Cc: Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Eric,

That works for me; let me check with the rest of our team and we'll confirm shortly.

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>

Sent: Monday, March 2, 2020 5:24 AM

To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; pshah@akingump.com

Cc: Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Kristin,

Are you available at 3:30 Eastern today for a follow-up call about remedy?

Thanks,

Eric

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>

Sent: Tuesday, February 25, 2020 3:39 PM

To: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>; Soskin, Eric (CIV) <ESoskin@civ.usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinkead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jsullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; jtyse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwtd.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Victoria,

Thank you.

For the plaintiffs, counsel will be as follows:

Arguing for plaintiffs: Jeff Rupert and Kristin Beneski

Appearing in person but not arguing: Brendan Selby

Appearing by telephone: Jacob Boyer, Jeffrey Dunlap, John Killeen, Darren Kinkead, Nicholas Sydow, and Christian Wright

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>

Sent: Monday, February 24, 2020 11:28 AM

To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinkead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jsullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; jtyse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwtd.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Good morning,

Yes, Judge Jones is amenable to this request, as long as (as you mention) those attorneys presenting argument appear in person.

The dial-in instructions are as follows:

Dial-In Number: 1-888-363-4734

Access Code: 1862323 #

Please provide me with the names of counsel who will be presenting argument, those who will be appearing in person but not arguing, and those who will be appearing by telephone.

Thanks!

Victoria

Victoria Ericksen
Courtroom Deputy to the Honorable Richard A. Jones
United States District Court
Western District of Washington
(206) 370-8517

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>

Sent: Friday, February 21, 2020 12:16 PM

To: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>; Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinkead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; ajsullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; jtyse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwtd.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Victoria,

One further question: would it be possible for plaintiffs' counsel located outside of Washington to attend the

hearing telephonically? (Attorneys presenting argument for plaintiffs will appear in person.)

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>

Sent: Friday, February 21, 2020 9:32 AM

To: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>; Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinkead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jisullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; jtyss@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

All,

Yes, the Court is amenable to counsel dividing their time to address different issues.

Thanks!

Victoria

Victoria Ericksen

Courtroom Deputy to the Honorable Richard A. Jones

United States District Court

Western District of Washington

(206) 370-8517

From: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>

Sent: Thursday, February 20, 2020 2:34 PM

To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinkead@atg.state.il.us; kmuse@atg.state.il.us;

susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov;
froehlichj1@michigan.gov; jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov;
daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov;
snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov;
ajsullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov;
keenanbp@doj.state.wi.us; jtyssse@akingump.com; pshah@akingump.com;
rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com;
rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Victoria,

Defendants do have a question, which may be of interest to the Plaintiffs as well:

Is the Court amenable to permitting a party to divide its time among two of its attorneys, with each attorney addressing different issues?

Thanks,

Eric Soskin
Counsel for Defendants

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>

Sent: Thursday, February 20, 2020 5:25 PM

To: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinthead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; ajsullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; Soskin, Eric (CIV) <ESoskin@civ.usdoj.gov>; jtyssse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Thank you, Victoria.

Plaintiffs do not have any questions at this time, but wish to inform the Court that the parties have conferred and agreed on a modified briefing schedule that will enable the States to file their reply brief next Thursday, prior to the argument next Friday: The government defendants have agreed to file their opposition brief by

2:30 pm on Monday, and all Defendants will make a good-faith effort to file earlier than that if possible. The States will file their reply brief by 5:00 pm on Thursday, or earlier if possible.

Best,
Kristin

Kristin Beneski
Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>

Sent: Thursday, February 20, 2020 9:43 AM

To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinkead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jsullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; Eric.Soskin@usdoj.gov; jtyse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Thank you.

Judge Jones will set the hearing on the Motion for Preliminary Injunction for **Friday, February 28th at 9:00 a.m.**

The court will permit the length of time for argument requested below.

In addition, Judge Jones will hear argument from the intervenors. Although the court has not ruled on the motion to intervene, he will also permit the intervenors to submit briefing on the motion.

Please let me know if you have any questions or concerns.

Thanks again,
Victoria

Victoria Ericksen
Courtroom Deputy to the Honorable Richard A. Jones
United States District Court
Western District of Washington
(206) 370-8517

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>

Sent: Wednesday, February 19, 2020 8:24 AM

To: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinthead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jsullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; Eric.Soskin@usdoj.gov; jtyisse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Victoria,

Counsel for the parties have conferred and are jointly requesting 30 minutes for plaintiffs and 30 minutes for defendants, for a total of 1 hour.

Counsel for the government defendants and counsel for defendants-intervenors have agreed that, if the court grants the motion to intervene or otherwise wishes to hear argument from intervenors, they will split their 30 minutes as follows: 20 minutes for the government defendants and 10 minutes for defendants-intervenors.

Best regards,
Kristin

Kristin Beneski
Assistant Attorney General
Complex Litigation Division | Washington Attorney General's Office
Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>

Sent: Tuesday, February 18, 2020 9:21 AM

To: Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinthead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jsullivan@riag.ri.gov; benjamin.battles@vermont.gov;

stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; Eric.Soskin@usdoj.gov; jtyssse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: State of Washington et al v. United States Department of State et al C20-00111RAJ

Counsel,

Judge Jones intends to grant the request for oral argument on Plaintiffs' pending Motion for Preliminary Injunction. For planning purposes, please confer with each other and designate one person to let me know how much time you are requesting for argument.

Thank you,
Victoria

Victoria Ericksen
Courtroom Deputy to the Honorable Richard A. Jones
United States District Court
Western District of Washington
(206) 370-8517

Exhibit 2

From: [Soskin, Eric \(CIV\)](#)
To: [Shah, Pratik](#); [Beneski, Kristin \(ATG\)](#); [Rupert, Jeffrey G. \(ATG\)](#)
Cc: [Glover, Matthew J. \(CIV\)](#); [Selby, Brendan \(ATG\)](#)
Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ
Date: Wednesday, March 4, 2020 9:07:17 AM

I can dial you in after I call Kristin.

From: Shah, Pratik <pshah@akingump.com>
Sent: Wednesday, March 4, 2020 11:57 AM
To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Soskin, Eric (CIV) <ESoskin@civ.usdoj.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>
Cc: Glover, Matthew J. (CIV) <mglover@CIV.USDOJ.GOV>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>
Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

I'm available to join as well, if that might be helpful. Thanks, Pratik

Pratik A. Shah

AKIN GUMP STRAUSS HAUER & FELD LLP

Direct: [+1 202.887.4210](tel:+1202.887.4210) | Internal: [24210](tel:24210)

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>
Sent: Wednesday, March 4, 2020 11:53 AM
To: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>
Cc: Shah, Pratik <pshah@akingump.com>; Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>
Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

****EXTERNAL Email****

Yes. You can reach me at my direct line below.

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>
Sent: Wednesday, March 4, 2020 8:40 AM
To: Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>
Cc: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; pshah@akingump.com; Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>
Subject: Re: State of Washington et al v. United States Department of State et al C20-00111RAJ

Jeff and/or Kristin,

Are you free for a quick call at 12:15 Eastern?

Thanks,
Eric

Sent from my iPhone

On Mar 3, 2020, at 7:21 PM, Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov> wrote:

Eric,

We had thought that we would receive a proposal from your clients promptly given the time sensitivity. Will a proposal be coming?

Jeff

Jeff Rupert
Washington Attorney General's Office
Complex Litigation Division
Division Chief
206-389-2116
JeffreyR2@atg.wa.gov

From: Beneski, Kristin (ATG)
Sent: Monday, March 2, 2020 1:11 PM
To: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; pshah@akingump.com
Cc: Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>
Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Eric,

Thanks for the further discussion on the call just now. We look forward to seeing your proposal in writing as soon as you can provide it.

Kristin Beneski
Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>
Sent: Monday, March 2, 2020 12:23 PM
To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Rupert, Jeffrey G. (ATG)

<jeffrey.rupert@atg.wa.gov>; pshah@akingump.com

Cc: Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Kristin,

Thank you for sharing. Just so that we are on the same page for the call, we think a more meaningful discussion can be had around the scope of an injunction that the Court could enter and with which Defendants could comply, as opposed to an agreed-upon temporary stay.

Best,
Eric

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>

Sent: Monday, March 2, 2020 2:06 PM

To: Soskin, Eric (CIV) <ESoskin@civ.usdoj.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; pshah@akingump.com

Cc: Glover, Matthew J. (CIV) <mglover@CIV.USDOJ.GOV>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

All,

In advance of our call at 3:30 ET, attached for your consideration is proposed language for an agreed injunction or other agreed order. The idea would be to preserve the status quo as to the relevant software/technology prior to March 9, and allow the rules' remaining provisions to go into effect, while we discuss/negotiate specific changes to the rules' language. Please note that we are circulating this proposal in the hopes of facilitating a productive discussion today, but we do not have authority to agree to it at this time.

Looking forward to speaking with everyone soon. We will circulate a calendar invite with a dial-in shortly.

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Beneski, Kristin (ATG)

Sent: Monday, March 2, 2020 8:46 AM

To: 'Soskin, Eric (CIV)' <Eric.Soskin@usdoj.gov>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; 'pshah@akingump.com' <pshah@akingump.com>

Cc: 'Glover, Matthew J. (CIV)' <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Yes, 3:30 Eastern works for us.

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Beneski, Kristin (ATG)

Sent: Monday, March 2, 2020 8:27 AM

To: 'Soskin, Eric (CIV)' <Eric.Soskin@usdoj.gov>; Rupert, Jeffrey G. (ATG)

<jeffrey.rupert@atg.wa.gov>; pshah@akingump.com

Cc: Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG)

<Brendan.Selby@ATG.WA.GOV>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Eric,

That works for me; let me check with the rest of our team and we'll confirm shortly.

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>

Sent: Monday, March 2, 2020 5:24 AM

To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Rupert, Jeffrey G. (ATG)

<jeffrey.rupert@atg.wa.gov>; pshah@akingump.com

Cc: Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Kristin,

Are you available at 3:30 Eastern today for a follow-up call about remedy?

Thanks,

Eric

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>

Sent: Tuesday, February 25, 2020 3:39 PM

To: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>; Soskin, Eric (CIV)

<ESoskin@civ.usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>;

Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov;

grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov;

christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov;

Robert.T.Nakatsuji@hawaii.gov; dkinkead@atg.state.il.us; kmuse@atg.state.il.us;

susan.herman@maine.gov; jdunlap@oag.state.md.us; [\[grobman@mass.gov\]\(mailto:grobman@mass.gov\); \[froehlichj1@michigan.gov\]\(mailto:froehlichj1@michigan.gov\); \[Jacob.Campion@ag.state.mn.us\]\(mailto:Jacob.Campion@ag.state.mn.us\);](mailto:phoebe.fischer-</p></div><div data-bbox=)

Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov;
matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov;
carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jsullivan@riag.ri.gov;
benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov;
keenanbp@doj.state.wi.us; jtyss@akingump.com; pshah@akingump.com;
rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com;
rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Victoria,

Thank you.

For the plaintiffs, counsel will be as follows:

Arguing for plaintiffs: Jeff Rupert and Kristin Beneski

Appearing in person but not arguing: Brendan Selby

Appearing by telephone: Jacob Boyer, Jeffrey Dunlap, John Killeen, Darren Kinhead, Nicholas Sydow, and Christian Wright

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>

Sent: Monday, February 24, 2020 11:28 AM

To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Soskin, Eric (CIV)

<Eric.Soskin@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>;

Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov;

grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov;

christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov;

Robert.T.Nakatsuji@hawaii.gov; dkinhead@atg.state.il.us; kmuse@atg.state.il.us;

susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov;

froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us;

Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov;

matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov;

carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jsullivan@riag.ri.gov;

benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov;

keenanbp@doj.state.wi.us; jtyss@akingump.com; pshah@akingump.com;

rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com;

rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Good morning,

Yes, Judge Jones is amenable to this request, as long as (as you mention) those attorneys presenting argument appear in person.

The dial-in instructions are as follows:

Dial-In Number: 1-888-363-4734

Access Code: 1862323 #

Please provide me with the names of counsel who will be presenting argument, those who will be appearing in person but not arguing, and those who will be appearing by telephone.

Thanks!

Victoria

Victoria Ericksen
Courtroom Deputy to the Honorable Richard A. Jones
United States District Court
Western District of Washington
(206) 370-8517

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>

Sent: Friday, February 21, 2020 12:16 PM

To: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>; Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinkead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jisullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; jtyssse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Victoria,

One further question: would it be possible for plaintiffs' counsel located outside of Washington to attend the hearing telephonically? (Attorneys presenting argument for plaintiffs will appear in person.)

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>

Sent: Friday, February 21, 2020 9:32 AM

To: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>; Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinthead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jisullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; jtyse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

All,

Yes, the Court is amenable to counsel dividing their time to address different issues.

Thanks!

Victoria

Victoria Ericksen
Courtroom Deputy to the Honorable Richard A. Jones
United States District Court
Western District of Washington
(206) 370-8517

From: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>

Sent: Thursday, February 20, 2020 2:34 PM

To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov;

christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinthead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; ajsullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; jtyisse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Victoria,

Defendants do have a question, which may be of interest to the Plaintiffs as well:

Is the Court amenable to permitting a party to divide its time among two of its attorneys, with each attorney addressing different issues?

Thanks,

Eric Soskin
Counsel for Defendants

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>

Sent: Thursday, February 20, 2020 5:25 PM

To: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG)

<jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov

<grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov;

christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov;

Robert.T.Nakatsuji@hawaii.gov; dkinthead@atg.state.il.us; kmuse@atg.state.il.us;

susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov;

froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us;

Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov;

matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov;

carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; ajsullivan@riag.ri.gov;

benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov;

keenanbp@doj.state.wi.us; Soskin, Eric (CIV) <ESoskin@civ.usdoj.gov>;

jtyisse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com;

ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-

00111RAJ

Thank you, Victoria.

Plaintiffs do not have any questions at this time, but wish to inform the Court that the parties have conferred and agreed on a modified briefing schedule that will enable the States to file their reply brief next Thursday, prior to the argument next Friday. The government defendants have agreed to file their opposition brief by 2:30 pm on Monday, and all Defendants will make a good-faith effort to file earlier than that if possible. The States will file their reply brief by 5:00 pm on Thursday, or earlier if possible.

Best,
Kristin

Kristin Beneski
Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>

Sent: Thursday, February 20, 2020 9:43 AM

To: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinthead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; ijsullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; Eric.Soskin@usdoj.gov; jtysse@akingump.com; pshah@akingump.com; rbayefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Thank you.

Judge Jones will set the hearing on the Motion for Preliminary Injunction for **Friday, February 28th at 9:00 a.m.**

The court will permit the length of time for argument requested below.

In addition, Judge Jones will hear argument from the intervenors. Although the court has not ruled on the motion to intervene, he will also permit the intervenors to submit briefing on the motion.

Please let me know if you have any questions or concerns.

Thanks again,
Victoria

Victoria Ericksen
Courtroom Deputy to the Honorable Richard A. Jones
United States District Court
Western District of Washington
(206) 370-8517

From: Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>
Sent: Wednesday, February 19, 2020 8:24 AM
To: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinthead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; ajsullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; Eric.Soskin@usdoj.gov; jtysse@akingump.com; pshah@akingump.com; rbyefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com
Subject: RE: State of Washington et al v. United States Department of State et al C20-00111RAJ

Victoria,

Counsel for the parties have conferred and are jointly requesting 30 minutes for plaintiffs and 30 minutes for defendants, for a total of 1 hour.

Counsel for the government defendants and counsel for defendants-intervenors have agreed that, if the court grants the motion to intervene or otherwise wishes to hear argument from intervenors, they will split their 30 minutes as follows: 20 minutes for the government defendants and 10 minutes for defendants-intervenors.

Best regards,
Kristin

Kristin Beneski
Assistant Attorney General

Complex Litigation Division | Washington Attorney General's Office
Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Victoria Ericksen <Victoria_Ericksen@wawd.uscourts.gov>

Sent: Tuesday, February 18, 2020 9:21 AM

To: Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>; Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; john.killeen@doj.ca.gov; grant.sullivan_coag.gov <grant.sullivan@coag.gov>; maura.murphyosborne@ct.gov; christian.wright@delaware.gov; andy.saindon@dc.gov; kathleen.konopka@dc.gov; Robert.T.Nakatsuji@hawaii.gov; dkinkead@atg.state.il.us; kmuse@atg.state.il.us; susan.herman@maine.gov; jdunlap@oag.state.md.us; phoebe.fischer-groban@mass.gov; froehlichj1@michigan.gov; Jacob.Campion@ag.state.mn.us; Glenn.Moramarco@law.njoag.gov; daniela.nogueira@ag.ny.gov; matthew.colangelo@ag.ny.gov; steven.wu@ag.ny.gov; snarasimhan@ncdoj.gov; carla.a.scott@doj.state.or.us; jboyer@attorneygeneral.gov; jisullivan@riag.ri.gov; benjamin.battles@vermont.gov; stowell@oag.state.va.us; nsydow@nmag.gov; keenanbp@doj.state.wi.us; Eric.Soskin@usdoj.gov; jtysse@akingump.com; pshah@akingump.com; rbyefsky@akingump.com; ross.siler@dwt.com; neal.katyal@hoganlovells.com; rpark@friedmanrubin.com

Subject: State of Washington et al v. United States Department of State et al C20-00111RAJ

Counsel,

Judge Jones intends to grant the request for oral argument on Plaintiffs' pending Motion for Preliminary Injunction. For planning purposes, please confer with each other and designate one person to let me know how much time you are requesting for argument.

Thank you,
Victoria

Victoria Ericksen
Courtroom Deputy to the Honorable Richard A. Jones
United States District Court
Western District of Washington
(206) 370-8517

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

Exhibit 3

From: [Beneski, Kristin \(ATG\)](#)
To: ["Soskin, Eric \(CIV\)";](#) [Rupert, Jeffrey G. \(ATG\);](#) pshah@akingump.com; [Glover, Matthew J. \(CIV\);](#) [Selby, Brendan \(ATG\)](#)
Subject: RE: State of Washington et al v. United States Department of State et al. C20-00111RAJ
Date: Wednesday, March 4, 2020 2:56:17 PM

Eric,

Thank you for sending this proposal. While it may be an appropriate starting point for a longer-term discussion geared toward a resolution of the parties' overall dispute, this proposal would not be in compliance with any preliminary injunction that preserves the status quo as to the technical data at issue, for the reasons I previewed on the phone this morning.

The status quo is that technical data related to current Category I items, including software and technology for the production of a firearm or firearm parts, are on the U.S. Munitions List; are subject to ITAR; and have not been transferred to the jurisdiction of the Commerce Department. Your proposal would not preserve that status quo, but would create yet another new, different regulatory regime involving a transfer to Commerce that has not been subject to public notice and comment. As discussed earlier, we will be submitting a proposal to the Court today that is tailored to the technical data at issue and preserves the status quo (and we understand you may submit your own proposal).

To reiterate, we continue to believe that the parties share the goal of ensuring effective regulation of these items, and we are optimistic that a mutually satisfactory negotiated resolution of this matter is possible. If your clients would like to open those discussions at any point, please let us know.

Kristin Beneski

Direct: 206.464.7459 | Cell: 206.595.3024 | Email: kristin.beneski@atg.wa.gov

From: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>
Sent: Wednesday, March 4, 2020 2:14 PM
To: Rupert, Jeffrey G. (ATG) <jeffrey.rupert@atg.wa.gov>; Beneski, Kristin (ATG) <kristin.beneski@atg.wa.gov>; pshah@akingump.com; Glover, Matthew J. (CIV) <Matthew.J.Glover@usdoj.gov>; Selby, Brendan (ATG) <Brendan.Selby@ATG.WA.GOV>
Subject: RE: State of Washington et al v. United States Department of State et al. C20-00111RAJ

Counsel:

As we have noted in our calls, we cannot agree to the entry of any relief or to any particular relief, to a stay of the effective date of the rules, or to any rulemaking or other administrative action by Defendants.

However, as we have been discussing, if the Court issues an injunction over the Government's objection and wishes to enter a narrower injunction than the one Plaintiffs seek, the Government would advise the Court that, as a technical matter, the Department of Commerce could, if ordered, preserve the status quo of the level of regulation of 3-D firearms files on the Internet, temporarily revise its regulation to: 1) treat the EAR's "published" exemption as identical to the ITAR's "public domain" exemption for all 3-D firearms files; 2) regulate all "technology" or "software" for the 3-D printing of firearms rather than files "ready for insertion"; or both.

One example of how Commerce may comply with such an preliminary injunction is set forth below. In our view, this is an immediately-implementable action (first through an online notice, then through an IFR or emergency rulemaking) by Commerce that could occur, if an injunction issued, that would maintain the status quo and protect your clients against the irreparable harms that you have alleged. We are sharing it with you to fulfill the Court's suggestion that we try to persuade you that there is narrow, interim relief, administered by Commerce, that would address the irreparable harms that you have identified.

To explain the contents, 732.2 and the internal language changes regarding what files are covered are designed to address claims about the "Ready for insertion" criteria. The change in the structure of 734.7, the new 734.7(a) text, and 734.7(a)(6) are designed to work together to provide that Commerce's treatment of these files as "published" is the same as State's treatment of them when in the public domain, and the March 8 date is designed to address whether you might the regulation of specific files covered by the court's previous injunctions is being carried over identically from the ITAR to the EAR.

To be clear, Defendants' issuance of this, or any other interim or emergency rule to comply with an injunction would not constitute the Government's agreement to any injunction, and Defendants explicitly will reserve their rights to appeal any injunction entered in this litigation or to issue an NPRM to replace any interim rule with a rule of Defendants' choice promulgated through public notice and comment procedures. Rather, we simply wish to set forth how a narrower injunction could be entered over the Government's objection that should meet the plaintiffs' demand for preliminary relief in this case in lieu of any preliminary relief directed at the State Department or the far broader injunction Plaintiffs have sought in this case.

Best regards,
Eric

[DRAFT AND SAMPLE INTERIM RULEMAKING]

PART 732 – STEPS FOR USING THE EAR

1. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

2. Section 732.2 is amended by revising the last sentence at the end of the paragraph (b) introductory text to read as follows:

§ 732.2 Steps regarding scope of the EAR.

* * * * *

(b) * * * The following also remains subject to the EAR: “software” or “technology” to produce a firearm or firearm frame or receiver, controlled under ECCN 0A501, as referenced in § 734.7(a)).

* * * * *

PART 734 – SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

3. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

4. Section 734.7 is amended by:

- a. Revising paragraph (a) introductory text;
- b. Removing paragraph (c); and
- c. Adding paragraph (6) to read as follows:

§ 734.7 Published.

(a) Except as set forth in paragraph (b) of this section, unclassified “technology” or “software” is “published,” and is thus not “technology” or “software” subject to the EAR, when it has been made available to the public without restrictions upon its further dissemination such as through any of the following described in paragraphs (a)(1) to (5). The criteria of § 734.7 are not applicable for unclassified “technology” or “software” to produce a firearm or firearm frame or receiver, controlled under ECCN 0A501, that is made available by posting on the internet in an electronic format for the operation of a 3-D printer (i.e., additive manufacturing equipment) to produce the firearm or firearm frame or receiver, except when it meets the criteria in paragraph (a)(6).

* * * * *

(6) “Software” or “technology” to produce a firearm or firearm frame or receiver, controlled under ECCN 0A501, that is made available by posting on the internet in an electronic format for the operation of a 3-D printer (i.e., additive manufacturing equipment) to produce the firearm or firearm frame or receiver that would have otherwise met the exclusion criteria in § 120.11 of the International Traffic in Arms Regulations (ITAR) (22 CFR 120.11) as of March 8, 2020, is considered “published” for purposes of this section of the EAR.

Note to paragraph (a)(6): *Notwithstanding the criteria in § 120.11(a)(7), such technology and software when licensed by BIS remains “subject to the EAR.”*

* * * * *